

The examiner noted for example, "anterior pretibia shell," "an upper tibia portion," front and back protion," "lower ankle forefoot portion," top and bottom" (Claim 1), "upper  
40 flanges (Claim 2), "lower flanges (Claim 3), "external flanges," (Claim 8). The examiner further states that the applicant is advised to review the entire specification and provide proper antecedent basis for every term used in the claims.

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Responsive to the examiner's objection, the applicant has reviewed and corrected the entire specification to provide the proper antecedent basis for every term used in the claims. Claims 1, 2, and 3 have been amended to include  
50 the proper antecedent basis in the specification to comply with the examiner's objection.

**CLAIMS REJECTIONS-35 USC 112:**

55 The examiner has stated that Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The examiner noted that claims 1-8 include many  
60 terms which do not have proper support in the specification (note the comments relative to the objection to the specification).

The examiner further states that Claims 1-8 are objected  
65 for the following reasons:

Note that phrase "D-DAFO (DeRoss---Orthosis)" claims 1,8 ), or "D-DAFO" (claims 2-7) render the scope of the claim unclear. Applicant is advised to remove these  
70 citations from the claims. The following terms lack antecedent basis: "said anterior shell" (Claim 1), "said elastic strap" (claim 6).

**CLAIM REJECTIONS-35 USC 112 (Cont'd):**

75 The applicant has responded to the examiner's claim  
rejections by amending Claims 1-8 and providing antecedent  
basis for every term used in the claims by reviewing and  
correcting the specification. The applicant has also  
80 complied with the examiner's objections for providing  
proper antecedent basis for the claimed subject matter  
(ie. 37 CFR 1.75 (d) (1) and MPEP 608.01 (o).)

The applicant has further complied with the examiner's  
objections to Claims 1-8 by removing the phrase "D-DAFO  
85 DeRoss---Orthosis) from Claims 1-8 as required.  
Both claims 1 and 6 have been amended to correct the lack  
of proper antecedent basis to overcome the examiner's  
objections for Claims 1-8.

90 **CLAIM REJECTIONS- 35 USC 103:**

The examiner has stated that claims 1-3 and 5-7 are  
rejected under 35 U.S. C. 103 (a) as being unpatentable  
Over Wang in View of Davies et al and Procelli, and/or  
95 Bourque et al. The examiner further states as for claim 1,  
Wang teaches every feature of claim 1 except for an  
anterior shell and a tongue. Davies et al teaches a tongue  
12, Porcelli, Nichols, and Bourque et al teach an anterior  
members 23a (Porcelli), 13 (Nichols), 42 ( Bourque et al).  
100 In view of sthe teachings of Davies et al and Porcelli,  
and/or Bourque et al, it would have been obvious to and  
ordinary skill in the art at the time the invention was  
made to provide the brace of Wang with an anterior shell  
for protecting the front opening of the tibia, and with a  
105 tongue for protecting the upper part of the foot. The  
examiner further states that the provision of a well known  
structure such as an anterior shell or tongue for a brace  
is only a matter of engineering choice, and therefore is

not patentable from prior art. The examiner notes Figures  
110 6-8 of Wang in Claim 2 and a pair of lower flanges 63 (Fig  
7 ) of Wang, or the lower flanges of Porcelli, or the lower  
flanges of Nichols in Claim 3. The examiner notes Figure 7  
of Claim 6 of Wang. The examiner further notes that the use  
of rivet fasteners is very well-known in the art and  
115 therefore is not patentable over the prior art.

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**The applicant respectfully responds to the examiner's  
rejections for Claims 1-3 and 5-7 as follows:**

120 The invention of Wang is purely a static structure  
apparatus providing a rigid plate conforming to an injured  
body part. It does not address the dynamic features of the  
subject patent dynamic ankle foot orthosis. Wang not only  
does not teach an anterior shell and tongue, but does not  
125 teach the dynamic stability of the subject patent.

The tongue (9) and the and pre-tibial shell (8) provide a  
unique forward and backward movement. This movement of the  
top half of the tongue (9) (at the ankle axis) and pre-  
130 tibial shell (8) create the foundation of the dynamic ankle  
foot orthosis giving it dynamic stability. These dynamics  
allow the patient's tibia to rotate forward (anteriorly)  
and yet supported. Wang's invention teaches purely a rigid  
structure plate, immobilizing the injured body part on the  
135 rigid plate.

Davies teaches a tongue 12 used in a walking splint and is  
purely for retaining the foot with a plurality of straps  
and slots to immobilize the ankle joint. It does not teach,  
140 claim, or disclose the applicant's dynamic stability  
through movement of the top half of the tongue (9) at the  
ankle axis and pretibial shell (8) in his invention either  
alone or in any "fair" combination.

145 Porcelli teaches a foot brace with a heel cup and clamp  
means to be tightened around the leg. The combination of  
the foot brace with a heel cup and clamping means does not  
teach the "dynamic stability" of the subject patent with  
the movement of the tongue and pre-tibial shell to provide  
150 the unique forward and backward movement of the subject  
patent. In the subject patent, these dynamics allow the  
patient's tibia to rotate forward (anteriorly) and yet  
supported! Porcelli does not teach the anterior shell of  
the subject patent either in the specification or claims.

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Nichols teaches only a shoe closure for lacing and  
retaining to the foot through a combination of flaps and  
eyelets. It does not teach nor disclose the subject patent  
and its features either alone, or in any "fair" combination.

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The sports boot strap closure system described in Bourque  
et al provides a hinge that movably attaches the ankle  
portion to the upper foot portion for limited rotation.  
It does not teach, describe, disclose or claim the subject  
165 invention either alone or in any "fair" combination.

It would be unobvious to one of ordinary skill in the art  
to combine the static brace of Wang with a tongue and  
anterior shell to attain the novel features of the subject  
170 invention in providing dynamic stability with its unique  
forward and backward movement with the tongue and pre-  
tibial shell with the Porcelli, Nichols, Bourque et al,  
Davies Patents either alone or in any "fair" combination.

175 This movement of the top half of the tongue and pretibial  
shell of the subject patent create the uniqueness and  
foundation of the dynamic ankle foot orthosis giving it  
dynamic stability. The dynamics allow the patient's tibia  
to rotate forward (anteriorly) and yet supported. The D-  
180 DAFO Dynamic Ankle Orthosis continuously provides the

support to hold the patient in STN (sub-talar neutral) while simultaneously maintaining tone and extension synergy. These novel features of the subject patent are not disclosed, described or claimed totally in any of the  
185 reference patents and cannot be disclosed in any "fair" combination.

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The examiner has rejected Claims 4 and 8 under 35 USC 103 (a) as being unpatentable over Wang in view of Davies et al  
190 and Porcelli, and further in view of Andrews. The examiner states that it would be obvious to an ordinary skill in the art to use the elastic strap for the brace of Wang. The examiner notes the liner of 11 in Davies et al, as for Claim 8.

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**The applicant responds to the examiner's rejection stating as follows:**

Claim 4 is a dependent claim for Claim 1. Although the  
200 elastic strap is taught by Andrews, the attachment means provided for securing the posterior base shell or said outer anterior shell in the ankle foot orthosis with the elastic strap of Claim 1 is not taught by either Wang, Davies et al, Porcelli, and/or Nichols either individually  
205 or in any fair combination.

The liner provided by Davies et al does not teach, disclose, or Claim the subject invention either alone or in any "fair" combination in view of Wang, Porcelli, and/or  
210 Nichols. Therefore, the subject invention is unobvious over the the prior art cited under 35 USC 103 (a), either alone or in any "fair" combination.

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220 The applicant has therefore overcome all the examiner's  
objections and rejections for the pending specification  
and the amended claims. The examiner requests  
reconsideration of the objections and rejections cited  
by the examiner and further requests that the applicant's  
novel patent be allowed to issue.

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Respectfully submitted,

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